Supreme Court, U.S.
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No. 99-1851

In The

Supreme Court of the United States

GEORGE A. MAYES,

Petitioner,

v.

LOCAL 106, INTERNATIONAL UNION OF OPERATING ENGINEERS, JANE M. LABARGE, (former) Office Manager, WILLARD J. LABARGE, (former) Business Manager, RICHARD C. KOSITZKA, (former) Treasurer, JAMES F. TOMMANEY, (former) Treasurer, JOHN J. KELLOGG, (former) President and Treasurer, FRANK LOMIO, Local 106 Coordinator, DIANE O'HARE, Office Manager, GORDON M. KILBY, LOCAL 106 Training Fund Trustee, EUGENE HALLOCK, Local 106 Training Fund Trustee, GENE MESSERCOLA, Business Manager, ROBERT VAN DYKE, Plan Administrator, Engineers Joint Benefit Funds,

Defendants.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the District Court's dismissal of Petitioner's Labor Management Reporting and Disclosure Act (LMRDA) §501 claims on ground that Petitioner failed to obtain leave of the court to bring suit, and the Second Circuit Court of Appeal's affirmance of such dismissal, in concert with the decisions of other Circuit Courts of Appeal and the Supreme Court on this issue?

2. Is the District Court's dismissal of Petitioner's case on summary judgment, before discovery, and the Second Circuit Court of Appeal's affirmance of such dismissal, in concert with Supreme Court decisions concerning the rights of pro se plaintiffs?

3. Are Petitioner's allegations that the courts below have made erroneous findings of fact irrelevant to the dismissal of his suit?

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STATEMENT OF THE CASE

This action was commenced by Mr. George A. Mayes (hereinafter "Petitioner") on June 3, 1993. (Record 6). Petitioner, a long-time union member of Local 106, brought this action individually against the Union, several of its former business managers and officers, two office workers, as well as the plan administrator of the Union Pension Fund and the Coordinator of its Training Fund. (Record 11). The gravamen of the approximately 637 page amended complaint (sometimes referred to as "Mayes II") is alleged violations of the Racketeering, Influenced and Corrupt Organization act (hereinafter "RICO") 18 U.S.C. §§1961-1968, as well as, on the same facts, violations of the Employee Retirement Income Security Act, (hereinafter "ERISA") 29 U.S.C. §§1101, 1104, and 1132, the Labor Management Reporting and Disclosure Act (hereinafter "LMRDA") 29 U.S.C. §§412, 529; The Hobbs Act, 18 U.S.C. §1951, and the Fair Labor Standards Act (hereinafter "FLSA") 29 U.S.C. §§201-219; Section 301 of the Labor Management Relation Act of 1974 ("LMRA") 29 U.S.C. §§185-186. (Record 9-10).

This case is not Petitioner's first attempt to obtain relief for his allegations. Since his removal as an officer of the Union in 1980 (after serving only a few months), he has instituted a prior federal lawsuit, *Mayes v. Local 106*, No. 86-CV-41, (N.D.N.Y. 1995) (herein "Mayes I") and a third federal lawsuit, *Mayes v. Messercola*, No. 94-CV-26 ("Mayes III"). (Record 9, 10). The prior lawsuit was resolved by dismissal of Petitioner's complaint after eight years of discovery and a trial, at which the Court found that Petitioner had failed to prove that he had been

discriminated against under the union job referral system, among other things. (Record 4-5, 9). The District Court's dismissal was affirmed on appeal. (Record 9). The subsequent lawsuit, Mayes III, remains pending. (Record 9). Mr. Mayes brought the present action based, in part, on many of the acts alleged in Mayes I and based upon documents provided in discovery in that case. (Record 5-6).

Although this action was commenced on June 3, 1993, Petitioner's allegations in this action start in 1979, over twenty years ago. (Record 11). He claims that a conspiracy was formed by various persons in an effort to control the affairs of Local 106. (Record 11). The bulk of Petitioner's claims allege overpayments to certain union benefit funds between 1981 and 1986 and later from 1990 to 1992 (Causes of Action 2 through 12 and 24-33); alleged improper hiring of retired members at the Westerlo, New York training site (Cause of Action 13); the alleged sale of Training Fund Real Property in Westerlo, New York in 1985 (Causes of Action 14, 19, 20, 21); alleged failure to reply to letters sent by Plaintiff between 1987 and 1993 (Causes of Action 17, 19, 20, 21, 23); failure to submit LM2 reports to Plaintiff's satisfaction, whether originally or as amended, in the years 1981-1985 (Cause of Action 18); granting union membership to unqualified and unnamed people from 1982 to 1987 (Cause of Action 15); and breach of contract under 29 U.S.C. §185(a), based upon all of the above (Causes of Action 1, 13-14, 15, 16, 18, 19, 20, 21, 23 and 24). (Record 15-16).

This action was commenced by Petitioner, who was at first acting pro se. Subsequently, Petitioner was represented by counsel for the purposes of responding to

Respondents' Motion to Dismiss the Amended Complaint and Motion for Summary Judgment. (Record 98). Petitioner himself stated that "with the help of several Union member supporters, [he] was able to obtain the legal services of Attorney Peter Henner." (Record 98). Mr. Henner began representing Petitioner in October, 1996. (Record 98). Mr. Henner submitted opposition papers to the motions for dismissal and summary judgment in February, 1997. (Record 98). In fact, Mr. Henner appeared as counsel for Petitioner throughout his opposition to the motions made by Respondents for dismissal and summary judgment. (Record 98).

On or about March 10, 1998, the District Court provided notice to the parties that it intended to treat the Respondents' motion as a motion for summary judgment and invited the parties to make further submissions in support of their respective positions on the pending motion. Additional submissions were made by Petitioner's counsel, Mr. Henner, as well as by Respondents' counsel. (Record 98).

By order and decision dated February 5, 1999, the District Court granted Respondents' motion for summary judgment. (Record 30). Petitioner appealed from that Order by Notice of Appeal dated March 8, 1999. (Record 98). In an Order dated November 19, 1999, the Second Circuit Court of Appeals affirmed. (Record 32-35). The Court of Appeals specifically noted that Petitioner "was represented by counsel during the relevant time period." (Record 35) Petitioner then petitioned the Court of Appeals for a rehearing en banc. (Record 94). By order dated February 15, 2000, the Court of Appeals denied that petition. (Record 36). On May 13, 2000, the Petitioner

submitted a petition to the Supreme Court for a writ of certiorari. (Record 1).

SUMMARY OF THE ARGUMENT

Petitioner George A. Mayes seeks the jurisdiction of the Supreme Court under Rule 10, sections (a) and (c), of the Supreme Court in regard to three issues: (1) the dismissal of his Labor Management Reporting and Disclosure Act (LMRDA) §501 claims; (2) the dismissal of his case on summary judgment, before discovery; and (3) allegedly erroneous findings of fact by the lower courts. However, none of these claims have merit, nor do they rise to the level of the systemic concerns normally addressed by the Supreme Court, and, thus, none of them rate the attention of the Court.

Petitioner's claim that the Second Circuit Court of Appeals affirmance of the United States District Court for the Northern District of New York's dismissal of his LMRDA claims is in conflict with decisions of the Third, Fifth, Seventh and Ninth Circuit Courts of Appeal is incorrect. Furthermore, Petitioner's claim that the Second Circuit's decision in his case conflicts with a Supreme Court case on this issue is incorrect. The decisions of the Fifth Circuit and the Supreme Court on which the Petitioner relies are irrelevant to the present case. Furthermore, the Ninth Circuit decision on which the petitioner relies is in concert with the Second Circuit's opinion in the Petitioner's case. The decisions of the Third and Seventh Circuits on which Petitioner relies are also in concert with the Second Circuit's holding in Petitioner's case;

they only conflict with dicta in the Second Circuit's opinion. Therefore, this issue does not raise any systemic concerns and does not merit the attention of the Supreme Court.

Petitioner also claims that the Court of Appeals affirmance of the District Court's dismissal of his case before discovery conflicts with two Supreme Court decisions regarding the rights of pro se plaintiffs. However, these decisions are irrelevant to the Petitioner's case because he was represented by counsel throughout his opposition to the motions for summary judgment and dismissal. Simply put, Petitioner was not pro se during the relevant time period. Furthermore, even if these cases did apply, dismissal of Petitioner's case would still be proper. Thus, there is no conflict on this issue for the Supreme Court to address.

Petitioner further claims that the courts below made erroneous findings of fact regarding his LMRA and RICO claims. However, the findings to which Petitioner refers are irrelevant to the dismissal of his case, because in each instance his case was dismissed on other grounds. Furthermore, these claims do not raise any type of systemic concern, but rather only address the instant case. Therefore, they do not merit the attention of the Supreme Court.

I. ARGUMENT

George A. Mayes has petitioned the Supreme Court for a writ of certiorari pursuant to 28 U.S.C. §1254(1), which states that review of appellate court decisions may

be obtained "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." Petitioner also seeks jurisdiction under Rule 10, sections (a) and (c), of the Supreme Court. Rule 10 states: "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." *See* U.S. Sup. Ct. Rule 10.

Rule 10(a) states, in pertinent part, that the Supreme Court may grant certiorari when "a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter. . . . " *See* U.S. Sup. Ct. Rule 10(a), 28 U.S.C. Rule 10(c) states that the Supreme Court may grant certiorari when "a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." *See* U.S. Sup. Ct. Rule 10(c).

Petitioner seeks the jurisdiction of the Court under Rule 10(a) and (c) in regard to three issues: (1) the dismissal of his Labor Management Reporting and Disclosure Act (LMRDA) §501 claims; (2) the dismissal of his case on summary judgment, before discovery; and (3) allegedly erroneous findings of fact by the lower courts. However, none of these claims have merit, nor do they rise to the level of the systemic concerns normally addressed by the Supreme Court, and, thus, none of them rate the attention of the Court.

A. THE DISMISSAL OF PETITIONER'S LMRDA CLAIMS DOES NOT CONFLICT WITH ANY CIRCUIT COURT OR SUPREME COURT DECISION

Petitioner's claim that the District Court's dismissal of his Labor Management Reporting and Disclosure Act (LMRDA) claims, and the Second Circuit's affirmance of that dismissal, conflicts with decisions from other Circuit Courts of Appeal and the Supreme Court is simply without merit.

The District Court dismissed Petitioner's LMRDA claims on the grounds that Petitioner did not follow the statutory mandate of §501(b) of the LMRDA to obtain leave of the court before bringing claims under §501(a) of that statute. *See Mayes v. Local 106*, 1999 WL 60135, 7 (N.D.N.Y.). The Second Circuit Court of Appeals affirmed that holding. *See Mayes v. Local 106*, 201 F.3d 431, 1999 WL 1070062, 1 (2d Cir (N.Y.)). All of the relevant decisions on which Petitioner relies recognize that seeking and obtaining leave of the court, as statutorily mandated by §501(b) of the LMRDA, is a prerequisite to bringing a claim under §501(a) of that statute. *See Horner v. Ferron*, 362 F.2d 224 (9th Cir. 1966); *McNamara v. Johnston*, 522 F.2d 1157 (7th Cir. 1975); *Sabolsky v. Budzanoski*, 457 F.2d 1245 (3d Cir. 1972). Thus, there is no conflict among the Circuit Courts of Appeal or between the Second Circuit and the Supreme Court. The other cases on which Petitioner relies are irrelevant to the case at hand. *See Fingar v. Seaboard Air Line Railroad Co.*, 277 F.2d 698 (5th Cir. 1960); *Calagaz v. Calhoon*, 309 F.2d 248 (5th Cir. 1962); *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944).

Section 501(b) of the Labor Management Reporting and Disclosure Act (LMRDA) sets forth the procedural requirements for bringing an action under §501(a) of the statute. Section 501(b) specifically sets forth two prerequisites to bringing a suit: (1) the plaintiff(s) must request that "the labor organization or its governing board or officers sue [to] recover damages or secure an accounting or other appropriate relief" and (2) the plaintiff(s) must obtain leave of the court to bring the suit, which may be obtained "upon verified application and for good cause shown, which application may be made ex parte." Once these requirements have been met, plaintiff may properly bring an action under §501(a) of the LMRDA.

Here, the proof that Petitioner failed to meet these expressly stated prerequisites to bringing a §501(a) cause of action is undisputed. The record indicates that Petitioner failed to satisfy the express requirement that he obtain leave of the court and, thus, the courts below properly found that Petitioner had failed to state a cause of action. (Record 24). The District Court based its decision to dismiss Petitioner's LMRDA claims on the ground that he did not seek leave of the court to bring suit based on these claims, and not on his failure to fulfill §501(b)'s request requirement. *See Mayes v. Local 106*, 1999 WL 60135, 7 (N.D.N.Y.). The Court of Appeals stated that it affirmed the District Court's opinion "for substantially the same reasons stated by the district court." *See Mayes v. Local 106*, 201 F.3d 431, 1999 WL 1070062, 1 (2d Cir. (N.Y.)). The Court of Appeals merely noted in dicta that Petitioner's claim that a request requirement would have been futile would be insufficient to excuse him from that requirement, had the Court needed to reach that issue.

See id. However, the Court did not reach that issue, resting instead on Petitioner's failure to seek leave of the court.

Despite this, Petitioner seeks the jurisdiction of the Supreme Court under Rule 10(a), claiming that the Second Circuit's ruling on §501(b)'s procedural requirements in his case is in conflict with the Third, Fifth, Seventh and Ninth Circuits' decisions concerning this issue. Petitioner also seeks certiorari in regard to this issue under Rule 10(c), claiming that the Second Circuit's decision conflicts with a Supreme Court decision. It is respectfully submitted that Petitioner mischaracterizes the basis for the Second Circuit's decision. The Second Circuit did not base its decision on Petitioner's failure to satisfy §501(b)'s request requirement; rather, it upheld the District Court's holding that Petitioner's LMRDA claims must be dismissed because he failed to seek leave of the court to bring them. *See id.* The decisions of the Fifth Circuit and the decision of the Supreme Court on which Petitioner relies are not relevant to this issue. Moreover, all of the other decisions on which Petitioner relies are in concert with the Second Circuit's holding in his case. They only conflict with dicta, and thus, there is no reason for the Supreme Court to take jurisdiction over this issue.

1. The Fifth Circuit and the Supreme Court

It is respectfully submitted that the Fifth Circuit cases and the Supreme Court case on which the Petitioner relies pertain to matters that have no bearing on the issue at hand. Petitioner, however, claims that the Fifth Circuit's decisions in *Fingar v. Seaboard Air Line Railroad Co.*

and *Calagaz v. Calhoon* conflict with the Second Circuit's decision in his case. 277 F.2d 698 (5th Cir. 1960); 309 F.2d 248 (5th Cir. 1962). In *Fingar*, the union member plaintiff made no effort to follow the grievance procedures set forth in the constitution of the Brotherhood of Locomotive Firemen and Enginemen before resorting to filing suit. 277 F.2d at 701. The Court held that when a member has not pursued the proper grievance procedures before filing suit, and there is "no basis for a finding that such appeal would be inherently futile or unfair," it is improper for the Court to intervene. *See id. Fingar* does not deal with §501 of the LMRDA in any way. The procedural requirements set forth in §501(b) of the LMRDA are wholly different from those set forth in the Brotherhood's constitution. Therefore, this case does not conflict with the Second Circuit's view of §501(b) of the LMRDA.

Likewise, the Fifth Circuit's decision in *Calagaz* is completely unrelated to the Second Circuit's decision regarding §501(b) of the LMRDA. *Calagaz* again addresses the requirement that plaintiffs must exhaust the internal remedies of their union before bringing suit. 309 F.2d at 259-60. Again, in this case, the plaintiffs brought no claims under §501(a) of the LMRDA and, therefore, §501(b)'s request requirement is not implicated. Thus, Petitioner's claim that the Second Circuit and the Fifth Circuit are in conflict over procedure under §501(b) of the LMRDA is entirely unfounded.

Petitioner further claims that the Second Circuit expressed a view of §501(b) of the LMRDA in his case contrary to that taken by the Supreme Court in *Steele v. Louisville and Nashville Railroad Co.* 323 U.S. 192 (1944). *Steele*, however, discusses another topic altogether, never

once mentioning the LMRDA. In *Steele*, the plaintiff, an African American railway employee, brought suit against the Brotherhood of Locomotive Firemen and Enginemen, claiming that the Railway Labor Act imposed a duty upon the Brotherhood to represent "all employees in the craft without discrimination based on their race." *Id.* at 193-94. The *Steele* Court articulated the proposition that plaintiffs need not exhaust internal remedies before filing suit. *See id.* at 206. However, this proposition does not in any way pertain to the procedures set forth in §501(b) of the LMRDA. Section 501(b) is fully separate from the internal exhaustion of remedies in a collective bargaining agreement or the other provisions of the LMRDA, and thus *Steele* does not conflict with the Second Circuit's decision in petitioner's case. Further, as noted above, the decision below was based not upon Petitioner's failure to request that the union sue, but upon his failure to obtain leave of the court. None of these cases even address the issue of a plaintiff's failure to seek leave of the court.

2. The Ninth Circuit

Petitioner also claims that the Ninth Circuit's decision in *Horner v. Ferron* conflicts with the Second Circuit's decision in his case. 362 F.2d 224 (9th Cir. 1966). However, *Horner* fully supports the Second Circuit's decision concerning the requirement that plaintiffs must seek leave of the court to bring suit. In *Horner*, the plaintiffs, members of the Pacific Coast District of National Marine Engineers' Beneficial Association, sued their union officials and others, claiming that the officials had breached their fiduciary duty under §501(b) of the LMRDA. *Id.* at 226-27.

The Court noted that the plaintiffs sought leave of the court to bring suit, as required by §501(b). *See id.* at 228-29. The Court further found that the plaintiffs had fulfilled the request requirement set forth in §501(b) of the LMRDA. *See id.* at 230. The crux of the issue in *Horner* was whether or not the plaintiffs had shown good cause to bring the suit when they sought leave of the court to do so, not whether they had fulfilled the requirement to seek leave of the court. *See id.* at 231-32. Therefore, *Horner* applied the procedural requirements of §501(b) in a way that harmonizes with the Second Circuit's view of those requirements.

3. The Third Circuit and the Seventh Circuit

Petitioner also claims that the Third Circuit's decision in *Sabolsky v. Budzanoski* conflicts with the Second Circuit's opinion in his case. 457 F.2d 1245 (3rd Cir. 1972). In *Sabolsky*, the plaintiff, a member of the United Mine Workers of America (UMWA), sued UMWA officials, alleging that they had breached their fiduciary duty under §501(a) of the LMRDA. *See id.* at 1248. The district court had dismissed the case because of the plaintiff's failure to observe the procedural requirements set forth in §501(b). The appellate court reversed this decision, stating that "a lack of formality in observing the procedures of Section 501(b) will not bar a court from granting leave, where appropriate." *See id.* at 1250. The Court further held that because a request to sue would have been an exercise in futility, the plaintiff need not make such a request before bringing suit. *See id.* at 1253.

The Third Circuit subsequently clarified its holding in *Sabolsky* in *Loretangeli v. Critelli*, 853 F.2d 186 (3d Cir. 1988). *Loretangeli* recognized that §501(b) placed restrictions on the right to sue, and specifically stated that obtaining leave of the court to sue, upon good cause shown, was one such restriction. *Id.* at 189. The Court stated that, "Congress designed section 501(b)'s good cause requirement as a prerequisite to suit." *See id.* The Court then noted that *Sabolsky* had adopted the Ninth Circuit's approach to good cause, which was stated in *Horner*. *See id.* at 190. Thus, the Court affirmed the requirement that plaintiffs obtain leave of the court before suing, while simultaneously upholding *Sabolsky's* mandate that allegations in the plaintiff's complaint may be sufficient to show good cause. Therefore, the decisions of the Third Circuit concerning the requirement to seek leave of the court are in accord with those of the Second Circuit.

Petitioner further claims that the Seventh Circuit's decision in *McNamara v. Johnston* conflicts with the Second Circuit, as well. 522 F.2d 1157 (7th Cir. 1975). In *McNamara*, the UAW member plaintiffs brought suit against state and international officers of the union, claiming that these officers had breached their fiduciary duty under §501(a) of the LMRDA. *Id.* at 1160. The requirement that the plaintiffs seek leave of the court to bring suit was not at issue in this case, and, therefore, this case cannot conflict with the holding in Petitioner's case, which was based on his failure to seek leave of the court. The Court did, however, state that when it is apparent that a request to sue would have been futile, "plaintiffs' failure to make such a request is excused." *Id.* at 1163. But

this statement only diverges from dicta in the Second Circuit's opinion, not with their holding that Petitioner's LMRDA claims must be dismissed because he failed to seek leave of the court. Therefore, *McNamara* is in concert with the Second Circuit's holding in petitioner's case.

It is clear that all of the Circuit Courts of Appeal in question abide by the statutory requirement that plaintiffs must seek leave of the court before they may bring suit under §501 of the LMRDA. Furthermore, the Supreme Court decision on which the Petitioner relies is irrelevant to this issue. In the absence of any conflict between either the Circuit Courts of Appeal or a Circuit Court of Appeal and the Supreme Court, there is no reason for the Court to take jurisdiction over petitioner's case. There is no other, larger systemic issue that is raised by petitioner's claim.

B. DISMISSAL OF PETITIONER'S CASE BEFORE DISCOVERY DOES NOT CONFLICT WITH SUPREME COURT DECISIONS CONCERNING THE RIGHTS OF PRO SE PLAINTIFFS BECAUSE PETITIONER WAS NOT PRO SE DURING THE RELEVANT TIME PERIOD

Petitioner also alleges that the Second Circuit's decision, which upheld the District Court's summary judgment dismissal of his case before discovery, conflicts with the Supreme Court's decisions in *Haines v. Kerner* and *Boag v. MacDougall*, 404 U.S. 519 (1972); 454 U.S. 364 (1982). *Haines* and *Boag* both address the rights of pro se plaintiffs. Petitioner, however, was not acting pro se during the critical period of this action, to wit: his opposition to Respondents' motions for dismissal and summary

judgment. (Record 98). Therefore, *Haines* and *Boag* are irrelevant to his case. Furthermore, even if *Haines* and *Boag* did apply, they are distinguishable from the case at bar. Despite this, Petitioner seeks the jurisdiction of the Court on this issue under Rule 10(c), as well.

Petitioner wishes the Supreme Court to grant him the rights of a pro se plaintiff when he was, in fact, represented by counsel when he opposed Respondents' motions for dismissal and summary judgment. The record expressly states that Petitioner was represented by Attorney Peter Henner, beginning in October, 1996, and that Mr. Henner acted on Mayes' behalf to oppose the Respondents' motions. The record also states that Mr. Henner submitted opposition papers to the district court in February, 1997. Furthermore, the record shows that after the district court informed the parties that it intended to treat Respondents' motion as a motion for summary judgment in March, 1998, Mr. Henner submitted additional papers in support of Petitioner's position. (Record 98). Therefore, it is clear from the record that Mr. Henner represented the Petitioner from October, 1996 until at least March, 1998, which constitutes the critical time period in this lawsuit. Despite Mr. Henner's efforts on the Petitioner's behalf, the district court granted summary judgment for the Respondents. (Record 30). The court of appeals affirmed, making special note of the fact that Petitioner "was represented by counsel during the relevant time period" and that he "was given adequate notice and a reasonable opportunity to present additional evidence." *See Mayes v. Local 106*, 201 F.3d 431, 1999 WL 1070062, 1 (2d Cir. (N.Y.)). Therefore, the Supreme Court

cases to which Petitioner refers are completely immaterial to his case.

Even if *Haines* and *Boag* were relevant in some way to Petitioner's case, it is submitted that they are easily distinguishable from his case. In *Haines*, a state prison inmate brought an action against various government officials, claiming that he had been injured and deprived of his rights while placed in solitary confinement. 404 U.S. at 519-20. The United States District Court for the Eastern District of Illinois had dismissed plaintiff's complaint for failure to state a claim upon which relief could be granted, concluding that the plaintiff had failed to show a deprivation of federally protected rights. *See id.* at 595. The United States Court of Appeals for the Seventh Circuit affirmed. *See id.* The Supreme Court held that the District Court erred in dismissing the plaintiff's pro se complaint without allowing him the opportunity to present evidence on his claims. *See id.* at 595-96. The Court stated that, "We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *See id.* at 596 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Similarly, in *Boag*, a prisoner filed a pro se complaint with the United States District Court for the District of Arizona, alleging mistreatment in regard to his placement in solitary confinement. 454 U.S. at 364. The District Court dismissed the complaint as moot, since the plaintiff had been transferred to another prison facility. *See id.* The United States Court of Appeals for the Ninth Circuit

affirmed on different grounds, namely, that the plaintiff's action did not state a claim upon which relief could be granted. *See id.* at 365. The Supreme Court reversed the Court of Appeals' judgment on the grounds that the petitioner's complaint stated a cause of action. *See id.* The Court stated that it was following the mandate in *Haines* that pro se plaintiffs' inartful pleadings should be construed liberally. *See id.*

The present case is completely distinguishable from the situations in *Haines* and *Boag*. First, one must note that the District Court did construe Petitioner's 637 page complaint broadly. Specifically, the Court inferred that where the petitioner referred to §501(c) of the LMRDA, he meant §501(b) of that statute. *See Mayes v. Local 106*, 1999 WL 60135, 7 (N.D.N.Y.). In addition, as stated above, the Second Circuit noted that Petitioner had been given "adequate notice and a reasonable opportunity to present additional evidence." *See Mayes v. Local 106*, 201 F.3d 431, 1999 WL 1070062, 1 (2d Cir. (N.Y.)). Furthermore, even when Petitioner's complaint is construed liberally, he has failed to state a cause of action under any of the federal statutes that he has invoked. Reference to *Haines* and *Boag* cannot help Petitioner overcome the fact that many of his causes of action are time-barred and that the others improperly sought to use federal statutes as the vehicles for the claims that he has brought. *See id.* Petitioner simply has not stated a cause of action under any of the various statutes on which he has based his claims, and thus, it would be pointless to allow him to bring evidence to support his claims. Therefore, the present case is distinguished from both *Haines* and *Boag* and there is no conflict for the Supreme Court to address.

C. PETITIONER'S FACTUAL ALLEGATIONS ARE IRRELEVANT TO THE DISMISSAL OF HIS CASE

Petitioner brings further claims that findings of fact by the District Court and the affirmance of these findings by the Court of Appeals were "clearly erroneous." These claims address the merits of the Petitioner's particular case and do not address any larger systemic issues which would concern the Supreme Court. In addition, the Supreme Court employs what has been termed the "two court rule," which means that they will upset concurrent findings of fact by two courts below only when there is a very obvious and exceptional showing of error. *See Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987); *United States v. Doe*, 465 U.S. 605 (1984). Most importantly, the findings of fact to which Petitioner refers were irrelevant to the dismissal of his case. Therefore, there is no compelling reason to grant certiorari to review these findings of fact.

Petitioner claims that the District Court erroneously determined that he was a member of the union and that, therefore, he could not sue the union under the Labor Management Relations Act (LMRA). *See* 301(a) LMRA 29 U.S.C. §§185 -186. However, he has misconstrued the District Court's opinion in regard to his LMRA claims. What the Court actually determined was that "a suit properly brought under Section 301 [of the LMRA] must be a suit either for violation of a contract between an employer and a labor organization . . . or for violation of a contract between such labor organizations." *See Mayes v. Local 106*, 1999 WL 60135, 9 (N.D.N.Y.). (quoting *Wooddell v. International Bhd. Of Elec. Workers, Local 71*, 502 U.S. 93, 98 (1991)). Therefore, it is immaterial to the Court's

determination whether petitioner is a member of the union or not.

Furthermore, the petitioner's claim that the District Court improperly dismissed his twenty-fourth cause of action as time-barred is inaccurate. The District Court dismissed this cause of action for failure to state a claim. *See id.* Therefore, it is immaterial whether the activities that the petitioner alleged were "continuous or ongoing," because regardless, they fail to state a claim. Petitioner's allegations of erroneous factual findings are simply irrelevant to the dismissal of his case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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